

JUN 23 2004

FCC - MAILROOM

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of) MB Docket No. 02-248
)
Amendment of Section 73.202(b)) RM-10537
Table of Allotments)
FM Broadcast Stations)
Smiley, Texas)

To: Assistant Chief,
Audio Division
Media Bureau

MOTION FOR LEAVE TO FILE
REQUEST FOR WAIVER

On October 21, 2002, New Ulm Broadcasting Company ("New Ulm"), filed its Comments and Counterproposal in this proceeding. As part of its proposal to bring a new first reception service to the town of Schulenburg, Texas, New Ulm proposed to utilize a channel already assigned to New Ulm in the community of New Ulm, Texas, also proposing an equivalent replacement for the channel taken from New Ulm and including its commitment to apply for, build and operate that replacement channel. At the time of the filing, this "backfill proposal" was totally consistent with all applicable FCC Rules and Policies.

On February 11, 2003, the Commission issued a Memorandum, Opinion and Order in Pacific Broadcasting of Missouri, 18 FCC Rcd 2291 (2003), and in the course of denying an STA requested by Pacific in that proceeding, went on to also indicate its unhappiness with the existing backfill policy and directed the

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staff to "immediately cease this practice". As there was some measure of uncertainty as to what effect was intended by this change of policy upon existing cases, New Ulm and others on March 13, 2003 requested Reconsideration and Clarification from the Commission. While these requests were pending, the Bureau issued a Notice of Proposed Rulemaking in this Docket but it did not include the New Ulm proposal.

New Ulm continued to press its request for Reconsideration and/or Clarification of the effect and application of this new policy upon longtime existing Petitioners such as New Ulm (filing a Motion to Expedite on 6-25-03 and an Update to Motion to Expedite on 3-4-04) and on June 16, 2004, the Commission responded to the pending appeals, essentially denying any relief or retreat from the new backfill policy, indicating that it is to apply to everyone, no matter what their position, and directing the staff "in the ordinary course" to dismiss any petition, counterproposal, or existing Notice of Proposed Rulemaking that is inconsistent with the new backfill policy. At that point, the Commission indicated that any further relief, or request for relief, should be by way of a request for waiver of the new backfill policy, filed in the individual affected case.

In response to this Commission action, New Ulm hereby requests leave to file the attached "Request for Waiver" in this proceeding. In view of the facts as indicated, it is respectfully submitted that there is good cause to accept and consider the Request for Waiver. See Warmack Communications, Springfield,

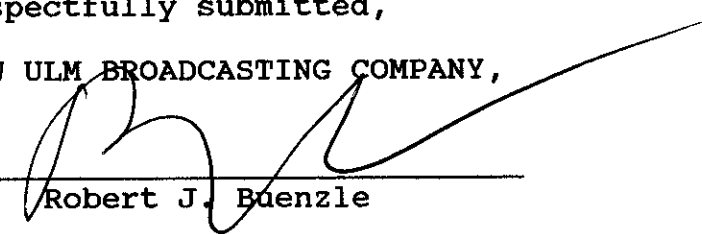
Florida, 3 FCC Rcd 2526 (1986); South Congaree and Batesburg,
South Carolina, 5 FCC Rcd 7480 (1990); and Live Oak and St.
Agustine, Florida, 4 FCC Rcd 758 at 760-61 (1989).

Wherefore, it is submitted that good cause exists and that the public interest would be served by grant of this Motion and it is therefore respectfully requested that the attached Request for Waiver be accepted and considered in this case.

Respectfully submitted,

NEW ULM BROADCASTING COMPANY,

by


Robert J. Buenzle

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June 23, 2004

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Motion for Leave to File Request for Waiver have been served by United States mail, postage prepaid this 23rd day of June, 2004, upon the following:

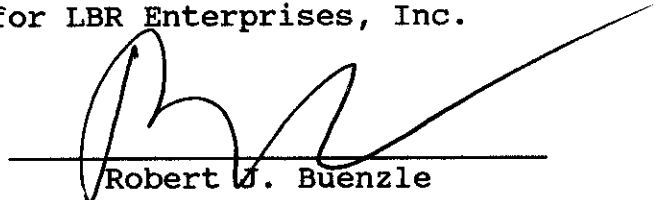
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